## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COURTNEY THOMPKINS, EZRA DIXON and KIM NEAL,	} No. 2:24-cv-00008-MRH
Plaintiffs,	<pre>} } Judge Hornak</pre>
VS.	}
CITY OF MCKEESPORT POLICE DEPARTMENT, CITY OF MCKEESPORT, ALLEGHENY COUNTY, ALLEGHENY COUNTY POLICE DEPARTMENT, MARK STEELE, ADAM ALFER, COLEMAN MCDONOUGH, BRENDA SAWYER, DANTE DIBERADIN, JOHN DOES #1-20, JANE DOES #1-20,	<pre>} } } } }</pre>
and EZRA DIXON,  Defendants.	<pre>} } Electronically Filed. }</pre>

## COMMONWEALTH DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

AND NOW, comes the Defendant, Brenda Sawyer ("the Commonwealth Defendant"), by her attorneys, Scott A. Bradley, Senior Deputy Attorney General, and Nicole R. DiTomo, Chief Deputy Attorney General, Chief Litigation Section, and, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, respectfully move this Court to dismiss certain claims in the Amended Complaint [ECF 21] heretofore filed by Plaintiffs, upon the following grounds:

- 1. Plaintiffs initiated the present action on or about December 19, 2022, by filing a Praecipe for Writ of Summons, which was docketed at No. GD-22-015663 in the Court of Common Pleas of Allegheny County. See [ECF 1-2].
  - 2. Plaintiff eventually filed a Complaint on December 4, 2023. See [ECF 1-2].
- 3. In the Complaint, Plaintiffs sought to raise a number of claims with respect to events surrounding efforts by law enforcement to locate and arrest an individual, Koby Lee Francis, for

shooting McKeesport Police Officer Gerasimos Athans on December 20, 2020, in McKeesport, Pennsylvania. See Complaint [ECF 1-3], at ¶ 3.

- 3. Named as a defendant is Brenda Sawyer. Ms. Sawyer is identified in the Complaint as "a regional director of the state Attorney General's Bureau of Narcotics Investigations & Drug Control." See Complaint [ECF 1-3], at ¶ 23.
- 4. Plaintiffs assert that the Defendants violated certain of their rights by the manner in which the pursued their efforts to locate and arrest Koby Lee Francis. See Complaint [ECF 1-3], at ¶¶ 76-202. Included among these, were claimed violations of the Fourth Amendment, the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. Id.
- 5. Based on these federal claims, the Defendants filed a Notice of Removal [ECF 1, 5] that was docketed at No. 2:24-cv-00008-MRH in this Court on January 3, 2024.
  - 6. Thereafter, on March 15, 2024, Plaintiffs filed an Amended Complaint [ECF 21].
- 7. The Commonwealth Defendant now moves to dismiss the Amended Complaint, or certain claims therein, for failure to state a claim upon which relief can be granted.
- 8. The Commonwealth Defendant has herewith filed a Brief in Support of this Motion, providing reasons in support of the foregoing assertion with greater particularity; the contents therein are incorporated by reference.

WHEREFORE, the Commonwealth Defendant respectfully requests that the instant motion be granted and that the Commonwealth Defendant be dismissed from this action and terminated from the docket; alternatively, the Commonwealth Defendant respectfully requests that all claims at Counts II, VII, VIII and IX be dismissed, as well as Count IV, to the extent it asserts a claim against the Commonwealth Defendant under the Pennsylvania state constitution.

Respectfully submitted,

MICHELLE A. HENRY Attorney General

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Date: April 15, 2024

s/ Scott A. Bradley

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Nicole R. DiTomo Chief Deputy Attorney General